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deed, definitely established landmarks fixed by the parties or the conveyance will always prevail over acreage.

[Ed. Note.—For other cases, see *Boundaries*, Cent. Dig. § 41.* 2 Va.-W. Va. Enc. Dig. 600.]

2. Ejectment (§ 95 (2)*)—Evidence—Sufficiency.—In ejectment in which it appeared that the deed under which plaintiff claimed was executed pursuant to the purpose of making an equitable partition of a larger tract, but in which deed, due to a mistake as to the amount of land involved, statement of acreage reserved by the conveyance was less than that reserved by definitely established landmarks, evidence held to justify a verdict in accordance with the landmarks for plaintiff who was a subsequent grantee of the portion reserved.

[Ed. Note.—For other cases, see *Ejectment*, Cent. Dig. § 281.* 4 Va.-W. Va. Enc. Dig. 910.]

3. Ejectment (§ 25 (6)*)—Defenses—Outstanding Deed of Trust.—An outstanding, unsatisfied mortgage or deed of trust on land to secure a debt is regarded in actions of ejectment as a mere lien upon the property, and the mortgagor or grantor may still maintain ejectment in his own name, and the defendant will not be permitted to set up such mortgage or deed of trust to defeat the action, since while technically the legal title is in the trustee, it is only vested in him for the definite purpose of securing the debt.

[Ed. Note.—For other cases, see *Ejectment*, Cent. Dig. § 104.* 4 Va.-W. Va. Enc. Dig. 902.]

Error to Circuit Court, Orange County.

Ejectment by A. A. Lane against J. E. Gravatt. Judgment for plaintiff, and defendant brings error. Affirmed.

E. H. De Jarnette, Jr., and *Geo. L. Browning*, both of Orange, for plaintiff in error.

Alex. T. Browning and *V. R. Shackelford*, both of Orange, for defendant in error.

SEABOARD AIR LINE RY. *v.* ABERNATHY.

June 14, 1917.

[92 S. E. 913.]

1. Railroads (§ 324 (1)*)—Injuries at Crossing—Contributory Negligence.—The degree of care which a traveler approaching a railroad crossing is required to exercise is ordinary care.

[Ed. Note.—For other cases, see *Railroads*, Cent. Dig. §§ 1020, 1022, 1023.* 4 Va.-W. Va. Enc. Dig. 127, 136.]

2. Railroad (§ 351 (12)*)—Injuries at Crossing—Instruction.—In

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

an action against a railroad for injuries to plaintiff in the collision of his automobile, driven by himself, with detached cars at a crossing, where the road, in 12 instructions, had presented to the jury its theory that plaintiff had been guilty of such contributory negligence as to bar his action in driving upon the crossing, where his view was obstructed, the approaching cars were making no noise, and there was no safe place in which to stop to look and listen, the instruction, given at plaintiff's request, that plaintiff was not guilty of contributory negligence if he exercised the precaution of a person of ordinary prudence, was properly given.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1204.* 4 Va.-W. Va. Enc. Dig. 142.]

3. Trial (§ 156 (3)*)—Demurrer to Evidence—Injuries at Railroad Crossing—Contributory Negligence.—The question of the contributory negligence of a person injured at a railroad crossing being of fact, if the jury might have found for plaintiff on the road's demurrer to the evidence, the court must so find.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 356.* 4 Va.-W. Va. Enc. Dig. 536; 16 Va.-W. Va. Enc. Dig. 408, 987.]

4. Railroads (§ 327 (3)*)—Injuries at Crossing—Duty of Travelers.—Travelers approaching a railway crossing are under imperative duty to look and listen, where looking and listening would be effective, and to stop if necessary to avoid a collision.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1046.* 4 Va.-W. Va. Enc. Dig. 137.]

5. Railroads (§ 324 (1)*)—Injuries at Crossing—"Ordinary Care."—The "ordinary care" required of one who attempts a railway crossing is such care and caution as an ordinarily prudent and reasonable person would exercise under the same circumstances, conditions, and surroundings.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1020, 1022, 1023.* 4 Va.-W. Va. Enc. Dig. 127, 136.

For other definitions, see Words and Phrases, First and Second Series, Ordinary Care.]

6. Damages (§ 217*)—Instruction.—Where the evidence was that the automobile was wrecked, that all that was left of it was the engine, and that the engine had not been removed from the scene of the accident at the time of the trial, an instruction that if the jury found for plaintiff in estimating his damages they should consider the value of the automobile, which was "destroyed" in the collision, was not erroneous; there having been no evidence of the salvage value of the machine offered.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 556-559.* 4 Va.-W. Va. Enc. Dig. 222.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

7. Railroads (§ 318*)—Injuries at Crossing—Negligence of Road.—The action of a railroad's employee in sending four uncoupled cars down an incline upon a crossing without efficient control was gross negligence.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1013.* 4 Va.-W. Va. Enc. Dig. 130.]

8. Railroads (§ 350 (13)*)—Injuries at Crossing—Contributory Negligence—Question for Jury.—In an action against a railroad for injuries to plaintiff when his Ford collided with loose cars at a crossing, question of plaintiff's contributory negligence, being one about which fair-minded men might honestly differ, held for the jury.

[Ed. Note.—For other case, see Railroads, Cent. Dig. § 1166.* 4 Va.-W. Va. Enc. Dig. 143.]

Error to Circuit Court, Brunswick County.

Action by C. P. Abernathy against the Seaboard Air Line Railway. To review a judgment for plaintiff, defendant brings error. Affirmed.

E. R. Williams, H. W. Anderson, and Andrew D. Christian,
all of Richmond, for plaintiff in error.

Buford & Peterson, of Lawrenceville, for defendant in error.

CAPE CHARLES BANK, Inc. v. FARMERS' MUT. EXCH., Inc.,
et al.

June 14, 1917.

[92 S. E. 918.]

1. Bills and Notes (§ 301*)—Release of Indorser—Extension of Time—Statute.—The rule of Code 1904, § 2841a, subsec. 120(6), that any agreement binding on the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved, releases such party was the rule at common law.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 706-721.* 13 Va.-W. Va. Enc. Dig. 24.]

2. Bills and Notes (§ 491*)—Release of Indorsers—Extension of Time—Burden of Proof.—In an action on a note, the burden to prove the defense that the holder extended the time for payment was on the indorsers, who alleged such defense.

[Ed. Note.—For other cases, see Bill sand Notes, Cent. Dig. §§ 1643-1648.* 13 Va.-W. Va. Enc. Dig. 65.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.